IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

ZINA PARELLI	:	
	:	
v.	:	
	:	
BELL ATLANTIC-PENNSYLVANIA	:	
and BELL ATLANTIC	:	CIVIL NO. 98-3392

MEMORANDUM

Giles, C.J. November ___, 1999

Zina Parelli alleges that her employers, Bell Atlantic-Pennsylvania, Inc. and Bell Atlantic (collectively "Bell") failed to accommodate her disability in violation of the Americans With Disabilities Act ("ADA"), 42 U.S.C. § 12101 et seq., fired her in violation of the Family and Medical Leave Act ("FMLA"), 29 U.S.C. § 2601 et seq., and denied her disability benefits in violation of the Employee Retirement Income Security Act ("ERISA"), 29 U.S.C. § 1001, et seq. She also alleges a state law claim under the Pennsylvania Human Relations Act ("PHRA"), 43 P.S. § 951 et seq. alleging that Bell refused to accommodate her disabilities. Now considered are the Bell's Motion for Summary Judgment and Parelli's Counter-Motion for Summary Judgment on the ERISA claim. For the reasons that follow, Bell's motion is GRANTED, and the Plaintiff's counter-motion is DENIED.

BACKGROUND

Material Facts

In November 1987, Parelli was hired by Bell as a Directory Assistance Operator. She was promoted to "Service Representative" in August 1988. In April 1994, the "Service

Representative" designation was changed to "Consultant," although the duties of the position remained the same. In August 1994, Parelli voluntarily transferred to Bell's Lancaster County Residence Sales and Service Center. Ms. Parelli worked in that office until she was terminated on May 29, 1996.

Parelli is a fifty-seven year woman who suffers from severe asthma, arthritis, and depression and is morbidly obese. Between December 1991 and January 1992, Ms. Parelli underwent several surgeries on her bladder to remove malignant tumors. Thereafter, she had chemotherapy and minor surgical procedures to attempt to prevent the cancer from recurring. In July 1994, Parelli had knee surgery to correct a problem that developed as the result of her weight and a fall. Prior to the events giving rise to this controversy, Parelli had missed time from work due to bouts of depression and bronchitis.

On February 19, 1996, Ms. Parelli complained of "work-related stress" and was immediately granted a leave of absence. After the seventh calendar day of Parelli's leave, her case was forwarded to Bell's Health & Safety Management Center ("HSMC") for administration and payment of any benefits due under the company's Sickness & Accident Disability Benefit Plan ("SADBP" or "the plan"). In accordance with the plan, she was assigned a case worker who monitored her leave and informed her that she was required to provide medical documentation in order to remain eligible for benefits.

Based on the documentation provided, Parelli was initially certified for leave through March 5, 1996. After several extensions of the certified disability period, on April 19, 1996, the HSMC sent Ms. Parelli written notice stating that without further documentation from her treating physician, her leave would end on May 12, 1996 and she would be expected to return

to work on May 13, 1996. Parelli did not provide HSMC with additional documentation nor did she report to work on May 13, 1996. Instead, Parelli received out-patient cancer treatment at the Community Hospital of Lancaster on that day. Because she failed to report to work as directed, on May 14, 1996, HSMC suspended Parelli's SADBP benefits, although she was not terminated. HSMC arranged a medical consultation between Parelli's treating psychiatrist, Dr. Brian P. Condron, and an outside specialist retained by HSMC, Dr. Bruce Smoller. According to Dr. Condron, the "consultation" consisted of Dr. Smoller asking him if "[he] told [Parelli] not to return to work," Dr. Condron saying "no," and Dr. Smoller thanking him. Based on this alleged "consultation," Dr. Smoller told the HSMC that: (a) Parelli could return to work immediately; (b) no medical accommodations were necessary; and (c) the suspension of Parelli's benefits should continue.

Subsequently, on May 23, 1996, Parelli's Bell supervisor, Ms. Barbara Winebarger, called Parelli at home to inform her that she was not eligible for FMLA leave and that unless she provided additional documentation of her illness or returned to work by May 29, 1996, she would be terminated. When Ms. Parelli did not report to work on May 29, 1996, Ms. Winebarger, Parelli's union representative, and another Bell representative telephoned Parelli to ask whether further medical documentation was forthcoming. When Parelli allegedly answered in the negative, she was informed that her employment was terminated as of May 29, 1996 for "unauthorized absence and refusal to work."

Thereafter, Parelli sought, and was denied, reinstatement of her short-term disability benefits. She also was denied benefits under Bell's Long-Term Disability Plan ("LTD Plan") which requires that an applicant receive fifty-two (52) weeks of short-term benefits as a

prerequisite to receiving such long-term benefits.

On July 1, 1998, Parelli filed a complaint alleging that Bell failed to accommodate her disability in violation of the ADA, 42 U.S.C. § 12112(8) (Count I), and the PHRA, 43 P.S. § 953 (Count II). Parelli also contends that Bell's reason for firing her -- "unauthorized absence and refusal to work" -- violated the FMLA, 29 U.S.C. § 2612 (Count III)[1]. Finally, Parelli asserts that her termination was an intentional denial of disability benefits to which she was entitled, and thus, a violation of the Employee Retirement Income Security Act ("ERISA"), 29 U.S.C. § 1140 (Count IV).

DISCUSSION

Analysis

Counts I & II - Failure to Accommodate Under the ADA and the PHRA

In Counts I and II of her Complaint, Parelli alleges that Bell failed to accommodate her disability in violation of the ADA and the PHRA. Specifically, Ms. Parelli asserts that because Bell expected her to work mandatory overtime, the company did not accommodate her work-stress related illness.

Although not bound to do so, Pennsylvania courts generally interpret the PHRA in accord with its federal counterparts, among them the ADA. Salley v. Circuit City Stores, Inc., 160 F.3d 977, 979 n.1 (3d Cir. 1996). This is due in part to the substantial similarity between the

[1] Parelli has withdrawn her FMLA claim. Therefore, the court dismisses Count III of her Complaint with prejudice.

definition of "handicap or disability" under the PHRA and the definition of "disability" under the ADA. Kelly v. Drexel Univ., 94 F.3d 102, 105 (3d Cir. 1996). Accordingly, this court will analyze both the Plaintiff's ADA and PHRA claim as one under the ADA rubric.

Under the ADA, employers are prohibited from discriminating "against a qualified individual with a disability because of the disability of such individual [with] regard to job application procedures, the hiring, advancement, or discharge of employees, employee compensation, job training, and other terms, conditions, and privileges of employment." 42 U.S.C. § 12112(a). A "qualified individual with a disability" is defined by the ADA as a person "with a disability who, with or without reasonable accommodation, can perform the essential functions of the employment position that such individual holds or desires." 42 U.S.C. § 12111(8). A "disability" is defined as "a physical or mental impairment that substantially limits one or more of the major life activities of [an] individual; . . . a record of such impairment; . . . or being regarded as having such an impairment." 42 U.S.C. § 12102(2).

In order for a plaintiff to establish a prima facie case of discrimination under the ADA, the plaintiff must show that: (1) she is a disabled person within the meaning of the ADA; (2) she is otherwise qualified to perform the essential functions of the job, with or without reasonable accommodations by the employer; and (3) she has been discriminated against by her employer because of her disability. Taylor v. Phoenixville Sch. Dist., 184 F.3d 296, 306 (3d Cir. 1999). Discrimination claims under ADA are not limited to adverse actions motivated by prejudice towards and fear of disabilities. The ADA specifies that an employer also discriminates against a qualified individual with a disability when the employer does not "mak[e] reasonable accommodations to the known physical or mental limitations of the individual" when

such accommodations would not "impose an undue hardship on the operation of the business of the [employer]." Id.; 42 U.S.C. § 12112(b)(5)(A). When an individual contends that she would be otherwise qualified with reasonable accommodation, that employee has the burden of at least facially showing that such accommodation is possible. Shiring v. Runyon, 90 F.3d 827, 832 (3d Cir. 1996). Further, an employer's obligations under the "interactive process" of determining the appropriate reasonable accommodation is not triggered until the disabled employee requests such accommodation. Mengine v. Runyon, 114 F.3d 415, 420 (3d. Cir. 1999).

Parelli had the affirmative obligation to request an accommodation. Nothing of record demonstrates that she made such a request. Further, she admitted in her deposition that she did not request any accommodation prior to her termination in May 1996. The record further shows that Parelli had been accommodated in the past when she had made a request and, as such, knew how to ask her employer for an accommodation. Nothing in the ADA mandated Bell "to speculate as to the extent of [Parelli's] disability or [her] need or desire for an accommodation" simply because it was aware that she was ill. See Gantt v. Wilson Sporting Good Co., 143 F.3d 1042, 1046-47 (8th Cir. 1998). If, and only if, Ms. Parelli was denied a reasonable accommodation request could Bell be liable for failure to accommodate under the ADA and PHRA. 42 U.S.C. § 12112(b)(5)(A); 43 P.S. § 953. Because Parelli never requested, and was therefore was never denied, an accommodation, this court grants summary judgment to Bell on Counts I and II of Ms. Parelli's Complaint.

Count IV - Termination of Benefits in Violation of ERISA

Count IV of Ms. Parelli's Complaint alleges that Bell fired her in order to avoid

paying her disability benefits in violation of § 510 of ERISA, 29 U.S.C. § 1140. That section prohibits employer conduct which has the "purpose of interfering with the attainment of any right to which [an employee] may become entitled." 29 U.S.C. § 1140. Congress enacted § 510 primarily to prevent "unscrupulous employers from discharging or harassing their employees in order to keep them from obtaining vested" rights. Gavlik v. Continental Can Co., 812 F.2d 834, 851 (3d Cir. 1987). To recover under § 510, a plaintiff need not prove that the "sole reason for [her] termination was to interfere with [her] rights." Id. However, that plaintiff must demonstrate that her employer "had the 'specific intent' to violate ERISA." Id.

To establish a prima facie case under § 510, an employee must show (1) that her employer engaged in prohibited conduct (2) undertaken for the purpose of interfering (3) with the attainment of any right to which that employee may become entitled. 29 U.S.C. § 1140. As is the case in employment discrimination claims under Title VII, after the plaintiff establishes her prima facie case discrimination is presumed and the burden shifts to the defendant-employer to articulate a nondiscriminatory explanation for its conduct. Gavlik, 812 at 853. If the employer carries its burden of production and proffers a non-discriminatory explanation, the presumption drops from the case. Id. However, the employee is afforded the opportunity to demonstrate that the employer's advanced reason is pretextual "either directly by persuading the court that a discriminatory reason more likely motivated the employer or indirectly by showing that the employer's proffered explanation is unworthy of credence." Id. (quoting Texas Dep't of Community Affairs v. Burdine, 450 U.S. 248, 256 (1981)).

In a recovery of benefits claim under ERISA, only the plan and the administrators and trustees of the plan in their capacity as such may be held liable, not the employer or sponsor.

See 29 U.S.C. § 1132(d)(2). Although the third circuit has not yet expressly held to that effect, this court agrees with those circuits who have so held, based on the plain language of the statute. See Gelardi v. Pertec Computer Corp., 761 F.2d 1323, 1324-25 (9th Cir.1985) (per curiam) (stating that ERISA only authorizes suits to recover benefits against the plan as an entity); Leonelli v. Pennwalt Corp., 887 F.2d 1195, 1199 (2d Cir. 1989) (holding that ERISA claim may be brought only against the plan and administrators).

Here, Bell is the "Plan Administrator" as the term is defined by § 1002(16) of the ERISA statute, *i.e.*, designated as such in the plan. However, all plan administration duties and responsibilities have been explicitly delegated to Bell's Corporate Employees' Benefits Committee (the "Corporate EBC") by the terms of the SADBP plan. Section 1102(a) of ERISA, "Named fidicuiaries," states that [e]very employee benefit plan "shall provide for one or more named fiduciaries who . . . *shall have authority to control and manage the operation and administration of the plan*." 29 U.S.C. § 1102(a)(1) (emphasis added). Further, although § 1002(16) "defines" the term "plan administrator," § 1102 fleshes out the definition by specifically referring to the "plan administrator" as a "named fiduciary." See 29 U.S.C. § 1102(c)(1). Thus, taking into account the function, and not merely the form, of the "plan administrator" label, the court concludes that Bell cannot be held liable as the "Plan Administrator" as to the ERISA claim.

Once Bell assigned its duties and responsibilities to the Corporate EBC and gave it control over the plan, Bell was no longer the "administrator" because it retained no discretionary control over the disposition of Ms. Parelli's claims. Accord Thornton v. Evans, 692 F.2d 1064, 1077 (7th Cir. 1982). The Corporate EBC, not Bell, is the "Plan Administrator"

for purposes of daily operation of the plan. Consequently, it follows that the Corporate EBC must be the "Plan Administrator" for purposes of any liability determination. Because the named defendants, Bell Atlantic and Bell Atlantic-Pennsylvania, Inc., are not the proper defendants for Parelli's ERISA claim, summary judgment must be granted for both Bell defendants. The foregoing is not a determination of the merits of Parelli's ERISA claim[2].

An appropriate order follows.

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[2] The statute of limitations for Parelli's ERISA claim, which is authorized by § 1132 of the ERISA statute, is governed by Pennsylvania's six year statute of limitations for contract actions. See Ferguson v. Greyhound Retirement & Disability Trust, 613 F. Supp. 323, 324 (W.D. Pa. 1985) (holding that § 1132 claim most analogous to contract claim thus contract statute of limitations of six years applicable); see also Meade v. Pension Appeals and Review Committee, 966 F.2d 190, 195 (6th Cir. 1992) ("Other courts have uniformly characterized section 1132(a)(1)(B) claims as breach of contracts claims for purposes of . . . statute of limitations); Johnson v. State Mutual Life Assurance Co., 942 F.2d 1260, 1263 (8th Cir. 1991) ("[W]e agree with those federal courts that have held, without exception to our knowledge, that a [§ 1132 suit] should be characterized as a contract action for statute of limitation purposes, unless a breach of the ERISA trustee's fiduciary duties is alleged."); Dameron v. Sinai Hosp. of Baltimore, Inc., 815 F.2d 975, 981 (4th Cir. 1987) (same).

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ZINA PARELLI	:	CIVIL ACTION
v.	:	
BELL ATLANTIC-PENNSYLVANIA	:	
and BELL ATLANTIC	:	NO. 98-3392

JUDGMENT

AND NOW, this ___ day of November 1999, upon consideration of Defendant's Motion for Summary Judgment and Plaintiff's Counter-Motion for Summary Judgment Under ERISA, and the arguments of the parties, for the reasons stated in the attached memorandum, it hereby is ORDERED that Defendant's motion is GRANTED and Plaintiff's counter-motion is DENIED.

JUDGMENT hereby is entered IN FAVOR of Defendant and AGAINST Plaintiff on Counts I, II, and IV of the Plaintiff's Complaint.

It is FURTHER ORDERED that Count III of the Plaintiff's Complaint is DISMISSED with prejudice.

BY THE COURT:

_____

JAMES T. GILES C.J.

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